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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

RONALD WOODS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE MERE PRESENCE OF A NUMBER OF DEPARTMENT OF CORRECTIONS EMPLOYEES IN THE SPECTATOR PORTION OF THE COURTROOM DEPRIVED PETITIONER OF A FAIR TRIAL AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHERE PETITIONER WAS CHARGED WITH FIRST DEGREE MURDER OF A PRISON GUARD AND ATTEMPTED MURDER OF THREE OTHER PRISON GUARDS.

II. WHETHER THE STATE'S USE OF PEREMPTORY CHALLENGES IN EXCUSING BLACK PROSPECTIVE JURORS FROM THE VENIRE DENIED PETITIONER EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

III. WHETHER THE TRIAL COURT ERRED IN SENTENCING PETITIONER TO DEATH IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
I. WHETHER THE MERE PRESENCE OF A NUMBER OF DEPARTMENT OF CORRECTIONS EMPLOYEES IN THE SPECTATOR PORTION OF THE COURTROOM DEPRIVED PETITIONER OF A FAIR TRIAL AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHERE PETITIONER WAS CHARGED WITH FIRST DEGREE MURDER OF A PRISON GUARD AND ATTEMPTED MURDER OF THREE OTHER PRISON GUARDS.	
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III. WHETHER THE TRIAL COURT ERRED IN SENTENCING PETITIONER TO DEATH IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.	
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
PRELIMINARY STATEMENT	1
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE AND FACTS	2
WHY THE WRIT SHOULD NOT ISSUE	4
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

CASES	PAGE
Barclay v. Florida, 463 U.S. 939, 77 L.Ed.2d 1134, 103 S.Ct. 3418 (1983)	8
Batson v. Kentucky, 476 U.S. ___, 90 L.Ed.2d 69, 106 S.Ct. ___ (1986)	6, 7
Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 (1962)	9
Demps v. State, 395 So.2d 501 (Fla.), cert. denied, 454 U.S. 933, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981)	2
Gryger v. Burke, 334 U.S. 728, 92 L.Ed. 1683 (1948)	9
Holbrook v. Flynn, 475 U.S. ___, 89 L.Ed.2d 525, 106 S.Ct. ___ (1986)	4, 5
Pulley v. Harris, 465 U.S. 37, 79 L.Ed.2d 29, 104 S.Ct. 871 (1984)	9
Ross v. Moffitt, 417 U.S. 600, 41 L.Ed.2d 341, 94 S.Ct. 2437 (1974)	4, 7
State v. Neil, 457 So.2d 481 (Fla. 1984)	2, 6, 7
Sumner v. Mata, 455 U.S. 51, 71 L.Ed.2d 480, 102 S.Ct. 1303 (1982)	8
Tibbs v. State, 397 So.2d 1120 (Fla. 1982), 457 U.S. 31, 72 L.Ed.2d 652, 102 S.Ct. 2211 (1982)	8
United States v. Johnson, 268 U.S. 220, 45 S.Ct. 496 (1925)	8
Wainwright v. Goode, 464 U.S. 78, 78 L.Ed.2d 187, 104 S.Ct. 378 (1983)	9
Wainwright v. Sykes, 433 U.S. 72, 53 L.Ed.2d 594, 97 S.Ct. 2497 (1977)	9
Woods v. State, 490 So.2d 24 (Fla. 1983)	1, 2, 6

OTHER AUTHORITIES	
Stern & Gressman, Supreme Court Practice (5th Ed. 1978) pp. 254-317	4
28 U.S.C. § 1257(3)	1

PRELIMINARY STATEMENT

Ronald Woods, the criminal defendant and petitioner below, will be referred to herein as Petitioner. The State of Florida, the prosecution and respondent below, will be referred to herein as Respondent. Attached hereto is an appendix containing the opinion of the Florida Supreme Court and other pertinent documents. Citations to the appendix will be indicated parenthetically as "A" with the appropriate page number(s). Citations to the petition for writ of certiorari will be indicated parenthetically as "P" with the appropriate page number(s).

OPINION BELOW

Petitioner seeks review of the Florida Supreme Court's opinion approving the convictions and sentences imposed by the trial court, including a sentence of death. The opinion is reported as Woods v. State, 490 So.2d 24 (Fla. 1986).

JURISDICTION

Petitioner seeks review pursuant to 28 U.S.C. § 1257(3). The judgment below was entered on April 24, 1986, and Petitioner's motion for rehearing was denied on July 18, 1986. The instant petition bears a date of service on September 16, 1986. This Court has jurisdiction only to the extent that it finds a substantial federal question is presented.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions relevant to the questions raised herein are found in the Eighth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case as stated on pages one, two, and three of the petition as being accurate to the extent stated. Respondent disagrees, however, with Petitioner's interpretation of the Florida Supreme Court's holdings below and, therefore, would restate the holdings for purposes of this petition as follows:

As to question two presented below, the court found "no likelihood of prejudice or intimidation sufficient to demonstrate an abuse of discretion in the trial court's failure to exclude the uniformed spectators" which were present during closing arguments. Woods v. State at 27. Contrary to Petitioner's assertion, the court did not make a finding that half of the spectators in the courtroom were prison guards in uniform, although similar estimates were alluded to at trial (R 2130, 2138-39).

Regarding the Florida Supreme Court's holding as to question three, the court specifically concluded that "[t]he record supports the jury and trial court's disparate treatment of these defendants. See Demps v. State, 395 So.2d 501 (Fla.), cert. denied, 454 U.S. 933, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981)." Woods v. State at 27.

Respondent accepts the recitation of facts as set forth in the opinion below, Woods v. State, 490 So.2d 24 (Fla. 1986), and included in the Appendix attached hereto. Respondent wishes to point out that after Petitioner's notice of appeal was filed, the Florida Supreme Court entered an order remanding the case to the trial court to hold a hearing to determine "how many of the black veniremen were peremptorily challenged and excused by the State." (SR 8). That hearing was held on January 4, 1985. Upon conclusion, the trial court stated that he didn't believe the instructions on remand were for him to make a determination of racial discrimination under the prevailing law in Florida, State v. Neil, 457 So.2d 481 (Fla. 1984). However, the trial court then stated that the "record speaks for itself for the testimony of the two witnesses and the stipulation of counsel. Were I called upon to make a finding, it

would be one of no discrimination." (SR 54). Other facts relevant to the disposition of the petition will be included in the argument portion of this brief as they relate to the questions presented.

WHY THE WRIT SHOULD NOT ISSUE

QUESTION I

WHETHER THE MERE PRESENCE OF A NUMBER OF DEPARTMENT OF CORRECTIONS EMPLOYEES IN THE SPECTATOR PORTION OF THE COURTROOM DEPRIVED PETITIONER OF A FAIR TRIAL AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHERE PETITIONER WAS CHARGED WITH FIRST DEGREE MURDER OF A PRISON GUARD AND ATTEMPTED MURDER OF THREE OTHER PRISON GUARDS.

Petitioner contends this Court should grant review in this case to determine "whether, under the circumstances of Woods' trial, a courtroom half filled with uniformed correctional officers was inherently prejudicial so that Woods was denied his constitutional right to a fair trial." (P 8) Petitioner has not attempted in any way to establish that this case presents a substantial federal question which merits the exercise of this Court's jurisdiction. Rather than even attempting to demonstrate the Florida Supreme Court determined an important federal constitutional question in the instant case, Petitioner is merely seeking review to determine whether the Supreme Court of Florida correctly decided whether, under the totality of circumstances, he received a fair trial. Rule 17 of the rules of this Court and Ross v. Moffitt, 417 U.S. 600, 616-617, 41 L.Ed.2d 341. 354-355, 94 S.Ct. 2437 (1974), make it clear that such review is not the function of the Writ of Certiorari. See also: Stern & Gressman, Supreme Court Practice (5th Ed. 1978) pp. 254-317.

Petitioner suggests that he did not receive a fair trial as guaranteed by the Constitution as the mere presence of the uniformed corrections employees in the courtroom amounted to a statement of the community's belief regarding Petitioner's guilt.

Nowhere in the petition is it shown that the Florida Supreme Court has decided a federal question in a way in conflict with an applicable decision of this Court.

Respondent agrees with Petitioner that this Court's recent decision in Holbrook v. Flynn, 475 U.S. ___, 89 L.Ed.2d 525, 106 S.Ct. ___ (1986), is the most instructive for this case (P 9-10)

and further submits that it is dispositive of this issue. However, there is no assertion that the decision rendered by the Supreme Court of Florida collides with this Court's decision in Holbrook.

In Holbrook, the question presented was whether a criminal defendant was denied his constitutional right to a fair trial when, at his trial with five co-defendants, the customary courtroom security force was supplemented by four uniformed and armed state troopers sitting in the first row of the spectator section. This Court held that such presence was not inherently prejudicial. 89 L.Ed.2d at 534. Here, Petitioner has failed to demonstrate, much less allege, any actual prejudice visited upon him.

The circumstances in the instant case demonstrate a much less likelihood of prejudice than in Holbrook. Sub judice, the officers complained of were merely Department of Corrections employees who were unarmed and evenly dispersed among civilians in the unfilled spectators gallery (R 2129-2130). Moreover, the trial court indicated that "many of the uniformed persons in the courtroom . . . are persons who testified in their uniforms during the course of the trial." (R 2130) The record further demonstrates that the assembly of the prison employees did not occur until just prior to closing arguments (R 2125, 2127). Thus, it is rather obvious that Petitioner is merely asserting that the decision below is erroneous and is, therefore, asking this Court to review the circumstances of his case in light of this Court's decision in Holbrook.

Petitioner has fallen woefully short of demonstrating any actual prejudice sufficient to constitute a deprivation of his constitutional right to a fair trial and, therefore, this Court should refuse to grant further review of this issue.

QUESTION II

WHETHER THE STATE'S USE OF PEREMPTORY CHALLENGES IN EXCUSING BLACK PROSPECTIVE JURORS FROM THE VENIRE DENIED PETITIONER EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Florida Supreme Court, after notice of appeal had been filed, remanded this case to the trial court so it could hold a hearing to determine how many of the black veniremen were peremptorily challenged and excused by the State. This hearing was held on January 4, 1985, at which time it was determined that voir dire extended through nine black prospective jurors. Of those nine the State peremptorily challenged five, and one for cause: the defense exercised peremptory challenges against two; and one served as an alternate juror. Woods at 26. It was further established that three of the five blacks peremptorily excused by the State were unacceptable because they were found to have had a problem with local law enforcement (SR 26). The prosecutor was unable to recall why he peremptorily excused the other two jurors (SR 40). Although not directed to do so, the trial court found that there was no discrimination in the State's use of its peremptory challenges (SR 54). On direct appeal, the Florida Supreme Court likewise found that Petitioner had failed to demonstrate a substantial likelihood that the State exercised its peremptory challenges solely on the basis of race. Woods at 26. The court's holding was based on the standard established in State v. Neil, 457 So.2d 481 (Fla. 1984) which was accurately set forth in the petition (P 12). Petitioner is now asking this Court to determine whether the Florida Supreme Court has created a standard more strict than that constitutionally required under this Court's recent decision in Batson v. Kentucky, 476 U.S. ___, 90 L.Ed.2d 69, 106 S.Ct. ___ (1986) which was decided one week after the decision below (P 15).

The State submits that the retroactivity of Batson does not become an issue here and is irrelevant as it is clear from the record that the dictates of Batson have been followed in this cause.

In Batson, this Court remanded the case to the trial court for a determination of purposeful discrimination which is precisely the same action undertaken by the Florida Supreme Court sub judice.

Petitioner fails to demonstrate how the standard set forth by the Florida Supreme Court in Neil, supra, is any more strict than the burden now required of defendants pursuant to Batson, supra. He merely requests this Court to review the correctness or erroneousness of the decision below, which, as stated above, is not the focus of this Court's exercise of its certiorari jurisdiction. Ross v. Moffitt, supra.

Having failed to assert or demonstrate conflict with Batson or any other applicable decision of this Court, Petitioner has failed to present herein a substantial federal question meriting discretionary review by this Court.

QUESTION III

WHETHER THE TRIAL COURT ERRED IN SENTENCING PETITIONER TO DEATH IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Petitioner concedes that the death penalty is proper in this case but contends that, based on the weight of the evidence, the trial court should have overridden the jury's life recommendation and likewise sentenced his co-defendant to death (P 17). In effect, the Petitioner asks this Honorable Court to substitute its own findings of fact for those of the trial judge and jury. It is respectfully submitted that certiorari review does not exist to allow continuous reargument regarding the weight of the evidence. Sumner v. Mata, 455 U.S. 51, 71 L.Ed.2d 480, 102 S.Ct. 1303 (1982); United States v. Johnson, 268 U.S. 220, 45 S.Ct. 496 (1925).

Mr. Woods complains that two different sentences were imposed upon two defendants who have similar characteristics and who were equally culpable. Relying on cold transcripts, he asks this Court to reweigh the evidence in mitigation for co-defendant Bean as being similar to that for Woods but at no time does he challenge the propriety of the trial court's order sentencing him to death. Petitioner fails to address the recognized prohibition against "reweighing evidence on appeal." See Tibbs v. State, 397 So.2d 1120 (Fla. 1982), 457 U.S. 31, 72 L.Ed.2d 652, 102 S.Ct. 2211 (1982). Petitioner argues that the Florida Supreme Court erroneously considered non-statutory aggravating factors as justification for the death sentence and then asks this Court to reconsider the evidence in mitigation in order to justify similar sentences. However, as Petitioner recognized, this Court in Barclay v. Florida, 463 U.S. 939, 77 L.Ed.2d 1134, 103 S.Ct. 3418 (1983), approved the use of non-statutory aggravating factors as long as they were not the sole justification for a death sentence. Here, there were other valid statutory aggravating factors (R 655). Moreover, an individualized determination on the basis of the character of the individual and the crime is important in determining whether to impose a death sentence. 463 U.S. at 958.

Nevertheless, misapplication of state law, had any occurred, does not constitute grounds for a federal constitutional claim. Wainwright v. Goode, 464 U.S. 78, 78 L.Ed.2d 187, 104 S.Ct. 378 (1983); Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 (1962); Gryger v. Burke, 334 U.S. 728, 92 L.Ed. 1683 (1948).

Finally, Petitioner is asking this Court to engage in comparative proportionality review of his death sentence, which this Court has refused to do. See Pulley v. Harris, 465 U.S. 37, 79 L.Ed.2d 29, 104 S.Ct. 871 (1984). Certiorari should not be granted.

co-defendant's counsel in *Sublette v. State*, 365 So.2d 773, 778 (Fla. 3d DCA 1978) ("Thus it is the fact of the comment not the source of the comment that effects denial of the right to remain silent.")

The standard by which the impropriety of comments is to be determined was discussed in *Trafficante v. State*, 92 So.2d 811, 814 (Fla.1957).

> In summary, our law prohibits any comment to be made, directly or indirectly, upon the failure of the defendant to testify. This is true without regard to the character of the comment, or the motive or intent with which it is made, if such comment is subject to an interpretation which would bring it within the statutory prohibition and regardless of its susceptibility to a different construction.

The state asserts that the Florida standard amounts to a per se reversal rule. That is as it should be, so long as proper objection is made and the issue is preserved for appeal. *Clark v. State*, 363 So.2d 331 (Fla.1978). The presumption of a defendant's innocence, the state's burden of proving his guilt beyond a reasonable doubt and the defendant's concomitant right to stand mute before his accusers without conceding guilt in any way are fundamental underpinnings of due process. To permit equivocal or indirect comments on the defendant's silence so long as any other reasonable interpretation is possible significantly erodes the protection this state has traditionally afforded its citizens. The state has shown no benefit to the citizens which would outweigh the harm done by receding from the established standard. We, therefore, should decline to do so.

The per se rule has served the citizens of Florida quite well. I am not so optimistic about the new rule that the Court is adopting. I am apprehensive that it is an open invitation to prosecutorial overreaching.

The right to stand mute at trial, free from comment thereon, should not depend on the state of the evidence of the defendant's guilt. I feel that the practical effect of the new rule will be just that.

I would approve the decision of the Fourth District.

OVERTON, J., concurs.

Ronald WOODS, Appellant,

v.

STATE of Florida, Appellee.

No. 64509.

Supreme Court of Florida.

April 24, 1986.

Rehearing Denied July 18, 1986.

Defendant was convicted of first-degree murder and sentenced to death before the Circuit Court, Union County, R.A. Green, J., and defendant appealed. The Supreme Court held that: (1) defendant failed to demonstrate a substantial likelihood that State's peremptory challenges to prospective jurors was based solely on race; (2) trial court did not abuse its discretion in refusing to grant continuance; (3) trial court did not abuse its discretion in failing to exclude uniformed spectators from courtroom; (4) evidence supported trial court's disparate treatment of defendants in sentencing; and (5) trial court did not err in failing to find more mitigation in sentencing defendant to death.

Affirmed.

Shaw, J., dissented and filed opinion.

1. Jury ⇐33(5.1)

Defendant failed to demonstrate a substantial likelihood that the State exercised peremptory challenges to remove prospective jurors solely on the basis of race, so as to require the trial court to inquire into the

State's motive behind excusing those persons.

2. Criminal Law ⇐614(1)

Trial court did not abuse its discretion in refusing to grant a second request for a continuance after granting an earlier continuance, where trial started nine weeks after defendant's original attorney withdrew from representing him and trial court appointed new attorney.

3. Criminal Law ⇐630

Trial court did not abuse its discretion in refusing to exclude from the courtroom uniformed department of correction employees in prosecution for first-degree murder of prison guard.

4. Criminal Law ⇐662

Evidence supported trial court's decision in prosecution for first-degree murder to follow jury's recommendation that defendant be sentenced to death while his codefendant be sentenced to life imprisonment where defendant was the homicide victim's prime attacker and defendant held door shut to prevent rescue of the victim.

5. Criminal Law ⇐986.2(1)

Trial court did not err in failing to find more mitigation in sentencing defendant to death for first-degree murder, despite evidence as to defendant's low intelligence and past life. West's F.S.A. § 921.141(5), (5)a, g), (6)g).

Michael E. Allen, Public Defender and David A. Davis, Asst. Public Defender, Second Judicial Circuit, Tallahassee, for appellant.

Jim Smith, Atty. Gen., and Lawrence A. Kaden and John M. Koenig, Jr., Asst. Attys. Gen., Tallahassee, for appellee.

PER CURIAM.

Ronald Woods appeals his conviction of first-degree murder and sentence of death. We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution. After reviewing this case, we affirm both the conviction and sentence.

Woods and Leonard Bean, both inmates at Union Correctional Institution, stabbed four guards, one of whom died during surgery. The state charged each of them with one count of first-degree murder, three counts of attempted first-degree murder, and possession of contraband (the knives used in the stabbings). In a joint trial the jury convicted both Woods and Bean of first-degree murder and possession of contraband. It also convicted Woods of all three counts of attempted murder,[1] but convicted Bean of only one of those attempts. After the sentencing proceeding, the jury recommended that Woods be sentenced to death and that Bean receive a sentence of life imprisonment. The trial court agreed with the recommendations and sentenced the defendants accordingly.

[1] During voir dire, one of Woods' attorneys objected to the state's use of its peremptory challenges to remove black prospective jurors. The court overruled the objection, and jury selection and trial continued. A full year after the completion of the trial, but before we heard this appeal, this Court filed its opinion in *State v. Neil*, 457 So.2d 481 (Fla.1984). In *Neil* we held that a party may be required to state the basis for exercising peremptory challenges. Woods filed a motion asking this Court to relinquish jurisdiction in order to reconstruct the record regarding the *Neil* issue.[2] The reconstructed record, however,

1. Woods does not appeal his other convictions and sentences. Our review of the record, however, shows them to be amply supported by the evidence, and we therefore affirm them.

2. We held in *Neil* that that case would not be applied retroactively because of the difficulty presented by incomplete records and reliance on former standards. Our reversal in *Andrews v. State*, 459 So.2d 1018 (Fla.1984), should not be seen as a retreat from that stand because the record in *Andrews* met the *Neil* criteria. Woods objected to the state's conduct, and, in our discretion, we allowed reconstruction of the record because the court reporter had not recorded and transcribed the bench conferences where the sides exercised their peremptories. Even now this record is the bare minimum we would expect from one seeking review of the *Neil* issue on appeal, i.e., a timely objection to the system

demonstrates no likelihood of abuse of its peremptory challenges by the state such as would require the trial court to inquire into the state's motive behind excusing these persons.

At trial Woods' attorney made a single objection to the state's exercise of its peremptory challenges. This occurred after the state had used ten peremptories. Defense counsel contended that six of those had been exercised against blacks and that the state had "removed every black that was on this jury." The reconstructed record shows this claim to be not exactly correct because at that time Bean's attorney had excused one of the first six blacks.

Voir dire in this case extended through nine black prospective jurors. On the reconstructed record the parties agreed that the state exercised peremptory challenges against six of the nine, Bean and Woods excused one each, and the ninth served as an alternate juror. In *Neil* we stated that "'exclusion of a significant number of black potential jurors ... will be insufficient, in and of itself, to warrant reversal of a trial court's determination not to make inquiry.'" 457 So.2d at 486, *quoting People v. Thompson*, 79 A.D.2d 87, 111, 435 N.Y.S.2d 739, 755 (1981). This is so because the reasons for excusing such persons may have been readily apparent to the judge and others in attendance at the voir dire. *Id.* Such is the case here.

The transcript of the voir dire shows that one of the people the parties thought had been peremptorily excused had actually been excused for cause.[4] Of the remaining five, two clearly expressed their general reluctance to participating in deciding this case.[5] The three other peremptories exercised against blacks by the state simply do not rise to the level needed under *Neil*. Woods has failed to demonstrate a substantial likelihood that the state exercised its peremptory challenges solely on the basis of race.[6]

[2] The public defender initially represented both Woods and Bean after their arrest in June 1983. In July the public defender's office withdrew from representing Woods, and the trial court appointed a new lawyer for him. The trial started nine weeks later. After granting one continuance, the trial court refused to continue the case again, and Woods now claims that this constituted unnecessary speed which denied him a fair trial because his defense could not be prepared adequately.

Granting or not granting a continuance is within a trial court's discretion. *Lusk v. State*, 446 So.2d 1038 (Fla.), *cert. denied*, — U.S. —, 105 S.Ct. 259, 83 L.Ed.2d 158 (1984); *Williams v. State*, 438 So.2d 781 (Fla.1983), *cert. denied*, 465 U.S. 1109, 104 S.Ct. 1617, 80 L.Ed.2d 146 (1984); *Jent v. State*, 408 So.2d 1024 (Fla.1981), *cert. denied*, 457 U.S. 1111, 102 S.Ct. 2916, 73 L.Ed.2d 1322 (1982). A trial court's ruling on a continuance will not be disturbed unless an abuse of discretion is shown. *Jent*. Woods has demonstrated no such abuse here. The trial court granted Woods' first motion for a continuance, but refused the next one. Woods' counsel argued that he needed more time to investigate the possibility of an inmate group's having coerced Woods into attacking the victims. A prior investigation, however, had never connected Woods to that group, and counsel's contentions amount to nothing more than conjecture and speculation. This case is a far cry from *Valle v. State*, 394 So.2d 1004 (Fla.1981), where counsel had only twenty-four days to prepare for trial, and our review of the record reveals no abuse of discretion here.

[3] A number of department of corrections employees attended the trial dressed

4. The state challenged Watkins for cause. She responded affirmatively when the trial court asked her: "You would not be a fair juror." Defense counsel did not object to her excusal for cause. The record reflects no likelihood of abuse of its peremptory challenges by the state such as would require the trial court to inquire into the state's motive behind excusing these persons. At trial, Woods' attorney made a single objection to the state's exercise of its peremptory challenges. This occurred after the state had used ten peremptories. Defense counsel contended that six of those had been exercised against blacks and that the state had "removed every black that was on this jury." The reconstructed record shows this claim to be not exactly correct because at that time Bean's attorney had excused one of the first six blacks. Voir dire in this case extended through nine black prospective jurors. On the reconstructed record the parties agreed that the state exercised peremptory challenges against six of the nine, Bean and Woods excused one each, and the ninth served as an alternate juror. In *Neil* we stated that "'exclusion of a significant number of black potential jurors ... will be insufficient, in and of itself, to warrant reversal of a trial court's determination not to make inquiry.'" 457 So.2d at 486, *quoting People v. Thompson*, 79 A.D.2d 87, 111, 435 N.Y.S.2d 739, 755 (1981). This is so because the reasons for excusing such persons may have been readily apparent to the judge and others in attendance at the voir dire. *Id.* Such is the case here. The transcript of the voir dire shows that one of the people the parties thought had been peremptorily excused had actually been excused for cause.[4] Of the remaining five, two clearly expressed their general reluctance to participating in deciding this case.[5] The three other peremptories exercised against blacks by the state simply do not rise to the level needed under *Neil*. Woods has failed to demonstrate a substantial likelihood that the state exercised its peremptory challenges solely on the basis of race.[6]

4. The state challenged Watkins for cause. She responded affirmatively when the trial court asked her: "You would not be a fair juror." Defense counsel did not object to her excusal for cause. The record reflects no likelihood of abuse of its peremptory challenges by the state such as would require the trial court to inquire into the state's motive behind excusing these persons.

5. The state challenged Watkins for cause. She responded affirmatively when the trial court asked her: "You would not be a fair juror." Defense counsel did not object to her excusal for cause. The record reflects no likelihood of abuse of its peremptory challenges by the state such as would require the trial court to inquire into the state's motive behind excusing these persons.

6. Not counting a reluctant juror is not evidence of discrimination.

in their uniforms. Just prior to closing argument Woods' counsel asked the trial court to clear the courtroom of the uniformed spectators. The court refused that request, and Woods now argues that the presence of these uniformed employees intimidated the jury, thereby denying him a fair trial.

In making this argument Woods relies on *Blair v. Goss*, 107 S.C. 440, 90 S.E. 130 (1917), *United States v. Rios Ruiz*, 579 F.2d 670 (1st Cir.1978), and *State v. Franklin*, 227 S.E.2d 449 (W.Va.1985). In *Goss* the South Carolina Supreme Court reversed Goss' conviction of transporting liquor because, during trial, several women had held up large posters condemning liquor before the jury. In *Rios Ruiz* the first circuit upheld the trial court's asking three uniformed policemen to leave the courtroom during the trial of a policeman accused of beating two persons while arresting them.[6] In *Franklin* West Virginia's Supreme Court reversed Franklin's conviction for driving under the influence of alcohol resulting in death because the local sheriff, president of the local Mothers Against Drunk Driving (MADD) chapter, and ten to thirty spectators wore large, bright yellow MADD buttons while attending the trial.

Courts have the inherent power to preserve order in the courtroom, to protect the rights of the parties, and to further the interests of justice. *Miami Herald Publishing Co. v. Lewis*, 426 So.2d 1 (Fla.1982). Excluding spectators, in effect closing a trial, is largely a matter of discretion with the court, *see Bundy v. State*, 455 So.2d 330 (Fla.1984), but the primary aim in such an exclusion is to preserve the defendant's rights. *Bundy*; *Green v. State*, 135 Fla. 17, 184 So. 504 (1938). Here, although the question is close, we find no likelihood of prejudice or intimidation sufficient to demonstrate an abuse of discretion in the trial court's failure to exclude the uniformed spectators.

Unlike in a small county, Given the number of prisons in that locality, uniformed corrections employees are a commonplace sight. Uniformed spectators caused no disruption, although they had apparently been present throughout this trial. On voir dire the prospective jurors indicated that they would follow the evidence and the law in their deliberations and would not be swayed by outside influences. In some instances the mere presence of certain persons may be intimidating. *Franklin*; *Rios Ruiz*. Such is not always the case, however. *Compare State v. Bishop*, 388 S.E.2d 670 (W.Va.1982) (high school students need not be excluded from watching trial of man accused of raping one of their classmates). Here, we can find no indication that the jury failed to perform its duty properly. We find that the trial court did not err in failing to exclude the complained-about spectators.

[4] As stated earlier, the jury recommended that Woods be sentenced to death and that his co-defendant Bean be sentenced to life imprisonment. Woods now claims that the trial court erred in following the jury's recommendation because he and Bean had similar characteristics and were equally culpable. The record, however, belies Woods' claim of equal culpability. Witnesses testified that Woods, rather than Bean, was the homicide victim's prime attacker. Woods, not Bean, told the victim he would die while the victim begged for his life. Woods, not Bean, held the office door shut to prevent other corrections officers from rescuing the victim. Finally, Woods stabbed a total of four guards, while Bean attacked only two. The record clearly supports the jury and trial court's disparate treatment of these defendants. *See Demps v. State*, 395 So.2d 501 (Fla.), *cert. denied*, 454 U.S. 933, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981).

[5] As his final point on appeal, Woods argues that the trial court failed to consider unrebutted nonstatutory mitigating evi-

6. On appeal Rios Ruiz claimed that removing these three spectators denied him a fair and public trial.

[illegible] Woods' low intelligence and his past life.[1] That the trial court did not articulate how he considered and analyzed the mitigating evidence is not necessarily an indication that he failed to do so. We do not require that trial courts use "magic words" when writing sentencing findings, and we recognize that some findings are inartfully drafted. *Downs v. State*, 453 So.2d 47 (Fla.1984), cert. denied, — U.S. —, 105 S.Ct. 3540, 87 L.Ed.2d 663 (1985). The trial court did not restrict the presentation of mitigating evidence, and we find no indication in the findings of fact that the court ignored that evidence. We find no error in the trial court's failure to find more in mitigation in this case. *See Shere v. State*, 473 So.2d 1282 (Fla.1985).

Our review shows Woods' convictions and sentences to be supported by the record. We therefore affirm them.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, McDONALD and EHRLICH, JJ., concur.

SHAW, J., dissents with an opinion.

SHAW, Justice, dissenting.

I would reverse the conviction on the basis that the presence of approximately forty-five corrections officers in uniform, approximately half the public in attendance during closing argument to the jury, effectively denied appellant a fair trial. The state concedes that this Court has already recognized that Union County is a small county and that many of the citizens of that county either work for the Department of Corrections or are related to such workers. *Engle v. State*, 446 So.2d 52, 53 (Fla.), cert. denied, — U.S. —, 105 S.Ct. 228, 83 L.Ed.2d 160 (1984), and *Morgan v. State*, 415 So.2d 6 (Fla.), cert. denied, 459 U.S. 1055, 103 S.Ct. 473, 74 L.Ed.2d 621 (1982).

Appellant does not argue that the presence of uniformed corrections officers amounts to per se reversible error. His argument is that under the unique circumstances of this case, the presence of such a large number of uniformed officers at the most emotionally charged stage of the trial amounted to an abuse of judicial discretion. I agree.

An accused is entitled to a trial before an impartial jury unaffected by outside forces and influences. The presence of forty-five uniformed corrections officers is, in my mind, no less prejudicial than the presence of forty-five friends of a murder victim appearing en masse at the trial of the accused assailant, bearing signs expressing their concern regarding the outcome of the trial. Exhibitions of this nature have no place in a court of law because of the great possibility of jury intimidation or coercion. Having denied appellant's motion for a change of venue, the trial court assumed the heavy burden of ensuring that the fairness of the trial was not compromised by the venue and the deep public interest in the trial. I am persuaded that the trial judge abused his discretion in not requiring the removal of the uniformed corrections officers, and that in the interest of justice a new trial should be granted.*

I agree with the majority's analysis and disposition of the other issues raised.

1. The trial court found the following aggravating circumstances under § 921.141(5): Felon[illegible] (1981); 2) committed by person under sentence of imprisonment; § 921.141(5)(a); and 3) committed to disrupt or hinder the lawful exercise of a governmental function or the enforcement of laws, § 921.141(5)(g). We find these aggravating factors amply supported by the record. The trial court found Woods' age (18 years) to be a mitigating circumstance. § 921.141(6)(g).

* Fla.R.App.P. 9.140(f):

> Scope of Review. The court shall review all rulings and orders appearing of the record necessary to pass upon the grounds of an appeal. In the interest of justice the court may grant any relief to which any party is entitled. In capital cases the court shall review the evidence to determine if the interest of justice requires a new trial, whether or not sufficiency of the evidence is an issue presented for review.

86-554.

also evidences that the Florida Supreme Court did not conduct, in this case, the proportionality review this Court in Barclay found so important. Barclay, supra, 77 L.Ed.2d at 1149.

Rarely does a case come along where two defendants are so similar in so many ways yet receive so widely differing sentences. This case presents a good vehicle to further explain the consistency requirement so important in death penalty cases and whether the review in court can impose a death sentence.

CONCLUSION

The petitioner, Ronald Woods, respectfully asks this Honorable Court to grant his petition and issue a writ of certiorari.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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Attorney for Petitioner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has been furnished by U.S. Mail to the Honorable Joseph F. Spaniol, Jr., Clerk of the Supreme Court of the United States, First and Maryland Avenue, Northeast, Washington, D.C. 20543; Mr. Ronald Woods, #064857, Post Office Box 747, Florida Sate Prison, Starkes, Florida, 32091; and by hand delivery to the Honorable Sid White, Clerk, Supreme Court of Florida, Tallahassee, Florida, 32301, and to Assistant Attorney General John M. Koenig, The Capitol, Tallahassee, Florida, this 1st day of September, 1986.

DAVID A. DAVIS
Assistant Public Defender

86-5542

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

Case No. _____

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RONALD WOODS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT OF FILING BY FIRST CLASS UNITED STATES MAIL PURSUANT TO RULE 28.2

CAME AND APPEARED BEFORE ME, the undersigned authority DAVID A. DAVIS, Assistant Public Defender, Attorney for petitioner, who first being duly sworn, deposes and says:

That on September 16, 1986, he placed in a United States Post Office Box, with first class postage prepaid, an original of the Petition for Writ of Certiorari to the Florida Supreme Court in the above-referenced case, and said Petition was duly and properly addressed to the Clerk of the United States Supreme Court. Further, he is a duly sworn and authorized member of the Bar of this Court.

DAVID A. DAVIS
Assistant Public Defender
Attorney for Petitioner

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO AND SUBSCRIBED to before me this 16th day of September, 1986, at Tallahassee, Leon County, Florida.

NOTARY PUBLIC, State of Florida

My Commission Expires: